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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,709	06/19/2001	Timothy L. Timmerman SR.		4077

23371 7590 03/21/2005

CROCKETT & CROCKETT  
24012 CALLE DE LA PLATA  
SUITE 400  
LAGUNA HILLS, CA 92653

EXAMINER

HORTON, YVONNE MICHELE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/884,709

Applicant(s)

TIMMERMAN ET AL.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: see the marked attachment.

## **DETAILED ACTION**

### ***Allowable Subject Matter***

The indicated allowability of claims 1-7 and 9-11 is withdrawn in view of a more careful review of the reference(s) to MUELLER. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,706,626 to MUELLER. MUELLER discloses a rigid panel (100) including a plurality of hold-down attachment points (132), a plurality of foundation bolts (166,172), a foundation placement template (106), a means (134) for attaching the structural panel hold down points to the foundation bolts, and a plurality of deflection elements in the form of lateral resisting members (140) and bolt holes for receipt of fasteners (124) distributed throughout, column 9, lines 5-8. Due to the fact that lateral members (140) resist force, inherently, "ductility", the ability of a member to be easily shaped, bent or molded, is "controlled". Further, it is old and very well known to one having ordinary skill in the art that holes made in any rigid member creates an area (the portion surrounding the hole) that is capable or more susceptible to bending or deflection. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made that not only does the inclusion of lateral members (140) in MUELLER "control" the ductility of the panel in some manner, but the inclusion

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of holes within the panel creates an area wherein the panel is weakened and is more apt to bend or deflect. Regarding claim 2, the means for attaching includes a plurality of hold-downs (130). In reference to claim 3, the rigid panel is rectangular shaped and includes two vertical side members (102a,b) connected to two or more horizontal members (104,106) to form an opening (OP), see the marked attachment, a plurality of attachment points (132), and, as noted earlier, by the plurality of deflection elements (140) being members that aid in resisting forces, column 9, lines 5-8, the members 9140) themselves being distributed throughout create one or more lateral resisting members (140). Regarding claim 4, the one or more lateral resisting members (140) are horizontal spacers forming sub-openings (SOP), see the marked attachment, wherein the sub-openings are covered by panels (110a,b) at vertical joints. In reference to claim 5, the lateral force resisting member (140) is metal, column 2, line 59. Regarding claim 6, the panels (110) include a plurality of panels (110a,110b). In reference to claim 7, the panels are attached using a plurality of fasteners (124). In reference to claims 9-11, the deflection elements (140) are arranged linearly in a vertical orientated pattern one after another thereby creating two or more linear patterns.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the revised ground(s) of rejection.

Regarding the applicant's argument that MUELLER does not teach "controlling" ductility because of the use of member 9140) to resist buckling, the claim does not define how ductility is being "controlled" 9i.e. to increase, decrease, or cease ductility).

Although the members 9140) aid in resisting ductility, no where does MUELLER detail that ductility is totally "controlled or eliminated by using this member (140). MUELLER merely details that the member's function is to "resist" buckling. Resisting buckling does not infer "eliminate" buckling. It is very well known in the art that the panel will still have a certain amount of ductility or bending. Secondly, due to the fact that the panel includes holes or apertures which are intended for receipt of fasteners (124), it too is obvious that these holes also create an area that "encourages" or introduces a certain amount of ductility to the panel.


In response to applicant's argument that the reinforcing members of MUELLER are not "used" to control ductility, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Yvonne M. Horton  
Art Unit 3635  
3/7/05

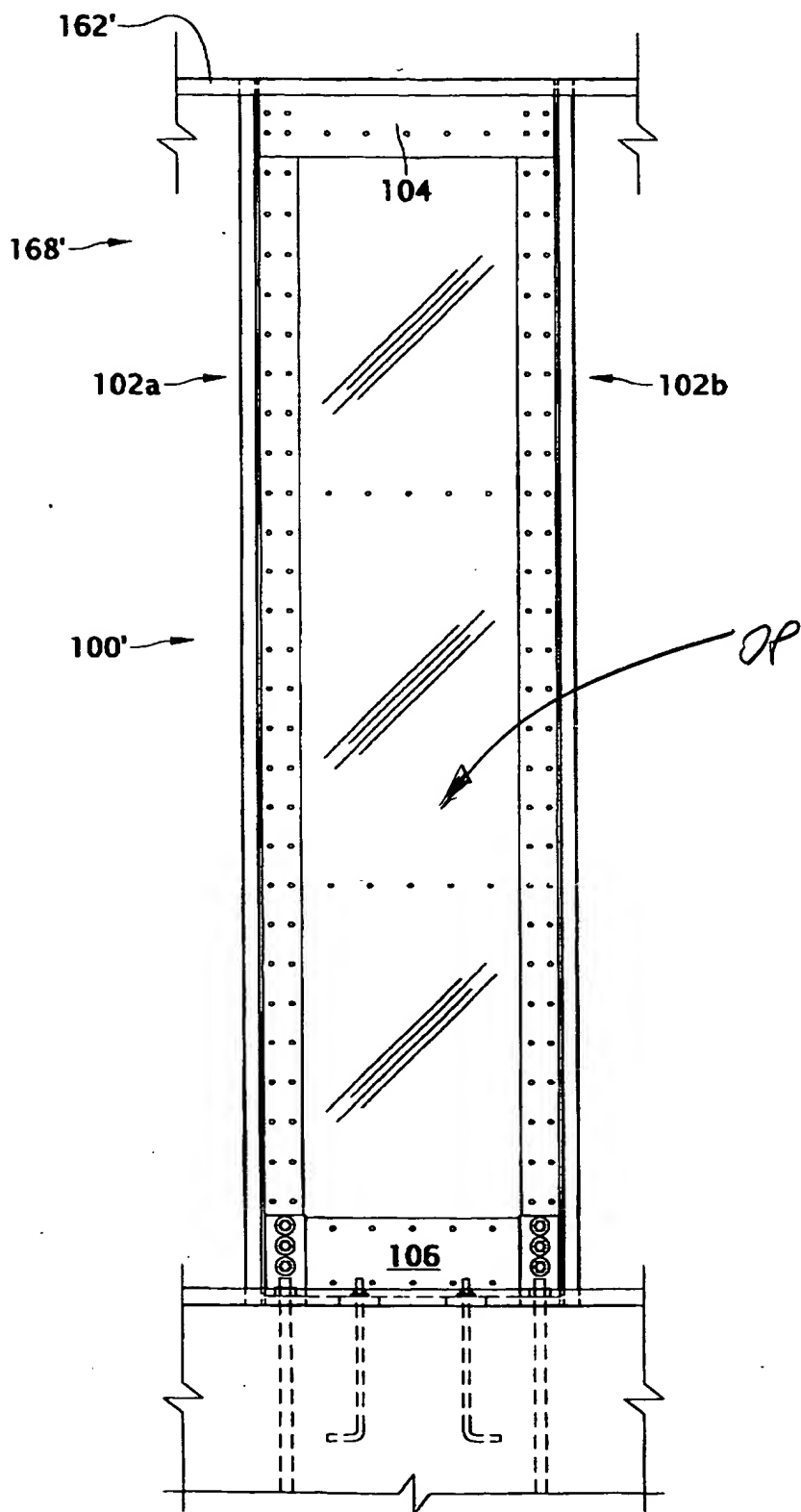


Fig. 6

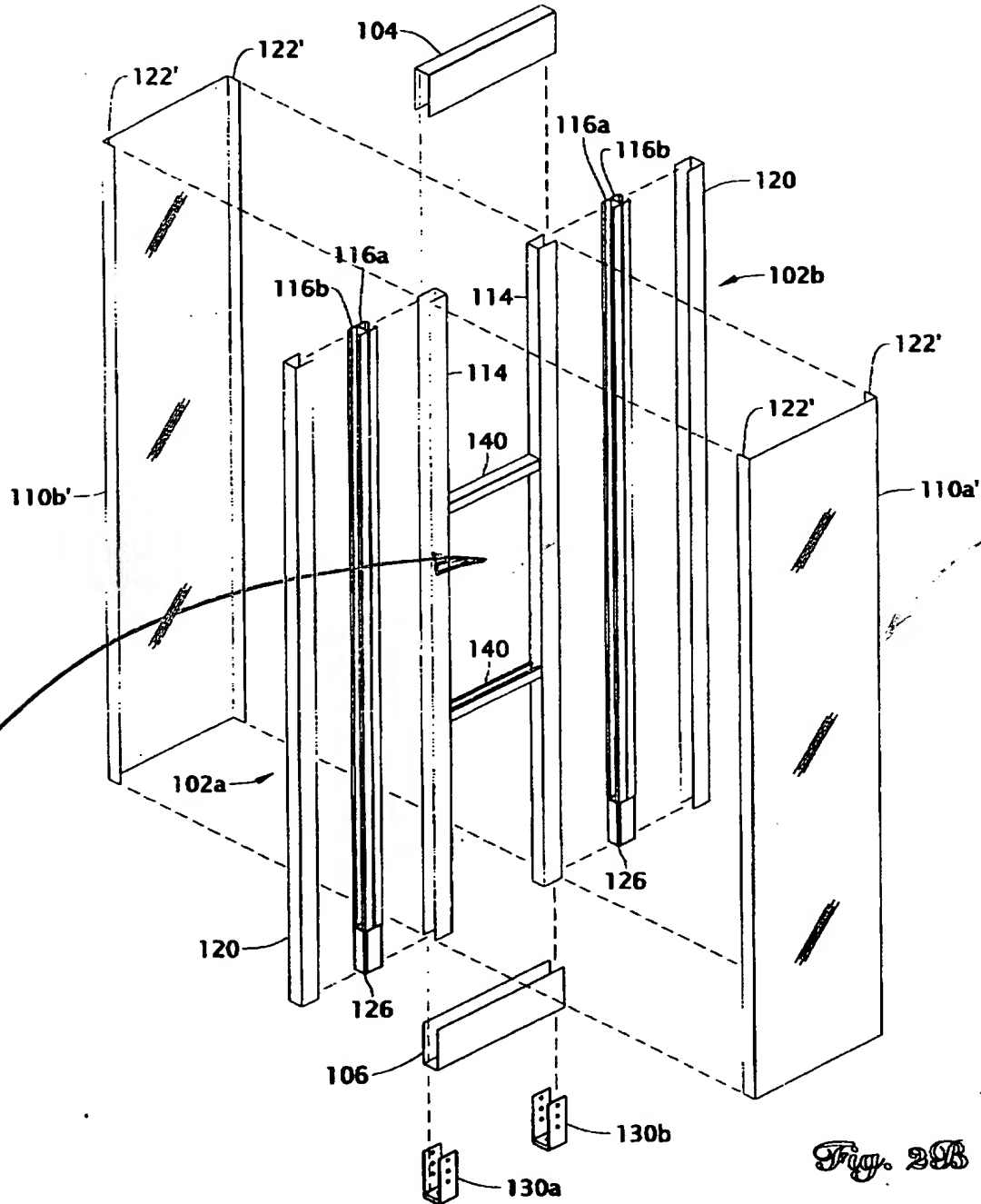


Fig. 2B